

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 95-24**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of the Sales and Use tax to Motor Vehicle Leases.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

[THE TAXPAYER] engages in the business of financing and leasing motor vehicles. Under its [NAME] lease program, [THE TAXPAYER] accepts assignments of leases originating at the motor vehicle dealer location. A copy of the [NAME] lease agreement is attached as an addendum to ruling. Under the terms of the agreement, the lease is

between the motor vehicle dealer (as lessor) and the retail customer (as lessee). In regard to acceptance of the lease by the lessor, the Agreement provides as follows:

Lessor accepts this Lease and assigns all right, title, and interest in this Lease and the Guaranty, if any, to the party identified on the other side as the intended initial assignee, under the terms of the Lease Plan Dealer Agreement as in effect from time to time with that assignee (the "Dealer Agreement"). Lessor also assigns all right, title, and interest in the leased vehicle to the party identified on the other side as the intended initial Assignee, or its designee, under the terms of the Agreement.

Although a copy of the Dealer Agreement has not been provided, it is understood the intended initial assignee is [THE TAXPAYER].

QUESTION

Who bears the responsibility for the remittance of state and local sales tax on the lease?

RULING

The assignment of the vehicle and the lease of the vehicle to [THE TAXPAYER] makes [THE TAXPAYER] the lessor of the vehicle for sales tax purposes and [THE TAXPAYER] will be responsible for both state and local sales tax under the lease.

ANALYSIS

T.C.A. Section 67-6-204 provides as follows:

(a) It is declared to be the intention of this chapter to impose a tax on the gross proceeds of all leases and rentals of tangible personal property in this state where the lease or rental is a part of the regularly established business, or the same is incidental or germane thereto. The tax is levied as follows:

- (1) At the rate of six percent (6%) of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to the business.
- (2) At the rate of six percent (6%) of the monthly lease or rental price by lessee or renter, or contracted or agreed to be paid by lessee or renter, to the owner of the tangible personal property.

Under the facts of this ruling request a taxable lease of a vehicle occurs. The issue is what is the effect of the lease provisions assigning both the lease and the vehicle to [THE TAXPAYER].

Under the terms of the lease agreement, immediately upon execution by the dealer two assignments occur. First, the dealer assigns all right, title, and interest in the lease to [THE TAXPAYER]. This is an assignment of the dealer's rights under the lease. A mere assignment to a third party of its right to receive payment under a lease would not relieve the dealer of sales tax liability incurred on the privilege of leasing the vehicle in Tennessee. Courts in other jurisdictions similarly imposing a sales tax on leases have held that the assignment of a lease does not relieve the assignor of sales tax liability incurred by virtue of the lease. *E.g., Chesapeake Industrial Leasing Company, Inc. v. Comptroller of the Treasury*, 628 A2d. 234, 237-38 (Md. 1993).

The second assignment is of all right, title, and interest in the leased vehicle to [THE TAXPAYER]. Under the sales tax, the term "sale" is defined to mean "any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration. . . ." T.C.A. Section 67-6-102(23)(A) (emphasis added). Therefore, this assignment is a taxable sale of the vehicle unless made for the purpose of resale. Assuming that [THE TAXPAYER] is properly registered as a dealer, this sale will be for the purpose of resale in the form of lease since [THE TAXPAYER] is also being assigned the lease of the vehicle.

The effect of these contemporaneous assignments of both the lease and the vehicle is to sell the vehicle to [THE TAXPAYER] and put [THE TAXPAYER] in the place of the dealer as lessor under the terms of the lease. As the lessor of the vehicle [THE TAXPAYER] will be liable for the state and local sales tax on the gross proceeds of the lease. The fact that [THE TAXPAYER] may allow the dealer to collect and retain some portion of the consideration is essentially no different from assigning some of the proceeds of the lease back to the dealer and would not operate to relieve [THE TAXPAYER] of the ultimate responsibility for the tax.

Pursuant to T.C.A. Section 67-6-701 et seq., local jurisdictions are authorized to impose a tax on the same privileges subject to the state sales tax. The analysis set out above is equally applicable to both the state portion of the sales tax and the local option sales tax.

Therefore, the effect of the lease assignments is to make [THE TAXPAYER] the lessor of the vehicle and liable for state and local sales tax on the proceeds of the lease. To the extent, however, that the dealer collects from the customer any amount denominated as sales tax that amount must be paid over to [THE TAXPAYER] and remitted to the state. The dealer is not permitted to retain any money collected from customers as sales tax. T.C.A. Section 67-6-514.

Steven Thomas
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APPROVED: Ruth Johnson, Commissioner

DATE: 7/6/95